# Indian E-commerce Industry – Regulations & Implications during Covid-19

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#### **Abstract**

As the e-commerce enters every household in across the globe the further growth potential and regulatory demands arise to make this more safe and secured. B2B e-commerce reaching \$7.7trillion in 2017; is twice the bigger than the B2C market across the globe. The global ecommerce report 2021 showed the Latin American market grew by 36.7% where Middle East & African markets grew by 19.8% which indicates that pandemic was like a boon in curse in the ecommerce industry. The paper studies the e-commerce industry across the globe and Indian ecommerce market as well which is expected to grow manifolds up to US\$ 200 billion by 2026 from the 2017 data of US\$ 38.5 billion. The internet penetration and usage of mobile phone has triggered this progression. Research methodology includes secondary data research which identifies & analyses major threats and legal protection to consumers in online shopping. As online shopping entered people's lives many people are enjoying the simplicity and its benefits; however the new e-Commerce approach also violates the rights of Internet consumers. In online shopping most consumer rights have been violated and infringement of these rights is not adequately protected in any Indian law. The authors would analyze a number of Indian laws to protect consumers in the Cyber world. The authors would also discuss the relevance of the Consumer Protection Act, 2019 and the United Nations Commission on International Trade Law (UNCITRAL) established by the United Nations General Assembly in 1996, adopted the Model Law of Electronic Commerce in 1966.

**Key Words:** E-commerce, online shopping, Indian laws, Legal framework, consumer protection

#### Introduction

E-commerce has brought a paradigm shift in trading throughout the world. Although the Indian e-commerce sector has witnessed an impressive growth rate in recent years, it is still beset with

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some serious challenges. E-commerce's etymological meaning is the business transaction of buying and selling products and services by & customers solely through an electronic medium, without using any paper documents. The *Organization for Economic Cooperation and Development* (OECD) defines E-commerce as a new way of conducting business, qualifying it as business occurring over networks that use non-proprietary protocols established through an open standard-setting process such as the Internet.<sup>1</sup>

The way business is done in India has been dramatically transformed due to E-commerce. The Indian E-commerce markets have seen exponential growth and are further expected to grow to US\$ 111.40 billion by year 2025 from the US\$ 46.2 billion market of 2020. Much of this growth has been attributed to the intenrnet penetration in Indian markets and pervasive usage of smart phone. Driven by the 'Digital India' programme number of internet connections grew to 782.86 million, which has now 97% wireless connections and 61% being in urban areas. (Source: https://www.ibef.org/industry/ecommerce.aspx)

The more fantastic customer choice drives the rapid popularity and acceptance of e-commerce throughout the world. Somebody can make improved convenience in commercial transactions with the help of Internet where the vendor or merchant can sell his products or services directly to the customer. The payment can be made electronic fund transfer system through debit card, credit card or net banking, etc. Out of these conveniences and ease in doing business, the e-commerce market and its holding in the whole trade and commercial transactions increase in demand and expand very fast, replacing non-e-commerce transactions in so many sectors. E-commerce is already appearing in all areas of business and customer services.<sup>2</sup>

As the e-commerce enters every household in across the globe the further growth potential and regulatory demands arise to make this more safe and secured. B2B e-commerce reaching \$7.7trillion in 2017; is twice the bigger than the B2C market across the globe. The global e-commerce report 2021 showed the Latin American market grew by 36.7% where Middle East & African markets grew by 19.8% which indicates that pandemic was like a boon in curse in the e-commerce industry. The e-commerce industry across the globe and Indian e-commerce market as well which is expected to grow manifolds up to US\$ 200 billion by 2026 from the 2017 data of US\$ 38.5 billion. The internet penetration and usage of mobile phone has triggered this progression. Also the internet banking services has boosted this market. Khan and Mahapatra (2009) studied that the quality of internet banking (i-banking) services in India from customer's perspective which indicates the e-commerce progression. They even highlighted how vast usage of advanced technology plays an important role in enhacing the quality of services and cosumer

<sup>&</sup>lt;sup>1</sup> Aijaj Ahmed Raj & Wazida Rahman, E-commerce Laws and Regulations in India: Issues and Challenges, https://www.researchgate.net/publication/330845555, last visited: 20/10/2020.

<sup>&</sup>lt;sup>2</sup> Rajendra Madhukar Sarode, "Future of E-Commerce in India Challenges & Opportunities" 1(12) IJAR 646 (2015).

experience. As per NASSCOM, irrespective of COVID-19 challenges/disruptions, India's ecommerce market continues to grow at 5%, with expected sales of US\$ 56.6 billion in 2021.

#### **Market Size**

During Covid pandemic the Indian markets saw new heights for e-commerce market volume. Like even the Indian Grocery market is estimated to reach US\$ 18.2 billion 2024 from a minimal level of US\$ 1.9 billion in 2019 with a CAGR of 57%. The e-commerce order volumes increased by 36% specifically in last quarter of 2020 with the personal care, beauty and wellness segment. India's consumer digital ecnomy is anticipated to grow to US\$ 800 billion by year 2030 from a level of USS\$ 537.5 billion in year 2020.

# National and International Regulations on E-Commerce Before Covid-19

S.No.	Name of Legislative Enactments	Aim & Objective of Legislative Enactments
1	UNCITRAL Model Law, 1996	It is the most important legislative text to adopt the fundamental principles of non-discrimination, technological neutrality and functional equivalence that are widely regarded as the founding elements of modern electronic commerce law.
2	Information Technology Act, 2000 as amended in 2008	Granting legal recognition to all transactions done through electronic data exchange, other means of electronic communication or ecommerce in place of the earlier paper-based communication, also, providing legal recognition to digital signatures for the authentication of any information or matters requiring authentication.
3	Personal Data Protection Bill, 2019	To regulates the collection and processing of personal data of Indian citizens by the government, native companies, and even foreign companies that deal with the data of Indian citizens.
4	Payment and Settlements Systems Act, 2007	Deals with all the regulatory aspects pertaining to electronic payment systems in India
5	Legal Metrology Act, 2009 r.w. Legal Metrology (Packaged Commodity) Rules, 2011	Online platform must display requisite information about the goods on display (comply with standards relating to labelling

ISSN: 0011-9342 | Year 2021 Issue: 9 | Pages: 4417- 4428

		and packaging)
6	Sale of Goods Act, 1930	Covers what the sales and shipping policy of the entity must contain such as the warranties, conditions, and the transfer of property in goods and also the existence or non-existence of return/refund options.
7	Indian Contracts Act 1872 r.w. IT Act 2000	Governs the conditions for validity of contracts formed through e-means, communication and acceptance of proposals, revocation, and contract formation between consumers, sellers, and intermediaries. Also, the terms of service, privacy policy, and return policies of any online platform must be legally binding agreements.
8	Consumer Protection Act, 2019 r.w. Consumer Protection (E- Commerce) Rules, 2020	To prevent unfair trade practices in e- commerce, direct selling and also to protect the interest and rights of consumers.

# 4.1 United Nations Commission on International Trade Law (UNCITRAL), 1996

To pave the way for the development of e-commerce and the internationally accepted standard of legal and compliance, the United Nations Commission on International Trade Law (UNCITRAL) established by the United Nations General Assembly in 1996, adopted the Model Law of Electronic Commerce in 1966. <sup>1</sup> On the basis of UNCITRAL Model Law, India has enacted the Information Technology Act, 2000; amended in 2008. In India, the Information Technology Act, 2000 does not address cyber users. The Consumer Protection Guidelines in the context of e-commerce, adopted on December 9, 1999 by the OECD Council, are designed to ensure that consumers are less secure when shopping online than when shopping at their local store or order catalog. These guidelines aim to promote: fair business, marketing and marketing practices; detailed information about online business ownership, the goods or services it provides and the terms and conditions of any transaction; a transparent process to verify transactions; secure payment methods; accurate, timely and inexpensive solutions; privacy protection; and consumer and business education. <sup>2</sup>

#### 4.2 Consumer Protection Act, 2019

The Consumer Protect Act, 1986 was amended in 2019 just after 33 years, when the Consumer Protection Act, 2019 was passed. Technology has advanced a lot over the years and while the old

ISSN: 0011-9342 | Year 2021 Issue: 9 | Pages: 4417- 4428

action is trying to keep it updated with minor amendments here and there. The abolition of the old act and the establishment of the action of 2019 were much needed. While there have been judicial announcements that bring in purchases made in ways that are made online under the wishes of consumers. The 2019 Act explicitly includes a consumer who buys goods or services online. In addition to the inclusion of online shopping, the action has also prompted promoters to respond to false or misleading advertisements.<sup>3</sup>

#### 4.2.1 Overview

In the 1986 act, the responsibility for that was solely for the manufacturers and service providers. Under section 21 (2) of the 2019 Act, the commission may charge a fine of 50 lakhs to an authorized person who continues to advertise false information about a product even after receiving a notice issued by a consumer. Misleading advertisements are also under the auspices of 'Universal Trade Practices' in this new initiative. Disclosure of personal information provided during a transaction is also considered an offense under this action. The Act also proposes to provide for a product liability where the manufacturer must not only compensate for defective property but must also compensate for any loss or damage incurred by the claimant as a result of the feature.<sup>4</sup>

## 4.2.2 Key Highlights of the New Consumer Protection Act, 2019

- i. **Covers E-Commerce Transactions:** New Law has expanded the definition of 'consumer'. The definition now includes any person who buys any goods, be it through offline or online transactions, electronic means, telecommunications, direct sales or multi-level marketing. The previous law did not specifically include e-commerce transactions, and this lacuna was considered by the New Law.<sup>5</sup>
- ii. **Enhancement of Pecuniary Jurisdiction:** Revised Limitations are set out under the New Act. Similarly, the regional forum can now appeal to consumer complaints when the amount of goods or services paid for does not exceed INR 10,000,000 (Indian Rupees Ten Million). The State Commission may appeal disputes when that number exceeds INR 10,000,000 (Indian Rupees Ten Million) but does not exceed INR 100,000,000 (Indian Rupees One Hundred Million), and the National Commission may exercise force when that amount exceeds INR 100,000,000 (INR One Hundred Million).
- iii. **E-Filing of Complaints**: The New Act gives the consumer the opportunity to lodge a complaint with a consumer legal forum in the area of residence or work of the consumer. This is not the same as the current practice of placing it in a shopping center or where the seller has his or her registered office address. The New Act also contains rules that allow consumers to file their complaints online and to hear and / or evaluate groups through a video conference. This is intended to provide ease of procedure and to reduce the inconvenience and harassment of consumers.<sup>7</sup>

ISSN: 0011-9342 | Year 2021 Issue: 9 | Pages: 4417- 4428

- iv. **Establishment of Central Consumer Protection Authority:** The new law proposes the establishment of a regulatory body known as the Central Consumer Protection Authority (CCPA), which has the greatest power to enforce the law. The CCPA will have an investigative unit, led by the Director-General, who will conduct an investigation or investigation into a consumer violation. The CCPA is empowered to take suo-moto action, recall products, order refunds for goods / services, cancel licenses and file action suits, if a consumer complaint concerns more than one (one) person.<sup>8</sup>
- v. **Product Liability & Penal Consequences:** The New Law introduced the concept of product liability and brings within its scope, product manufacturer, product service provider and product retailer, for any claim for compensation. The term 'product seller' is defined as the person who participates in the placement of a product for commercial purposes and can therefore include e-commerce forums. The defense that commerce platforms operate simply as 'platforms' or 'mergers' will not be accepted. There is an increased risk of debt to producers compared to product service providers and retailers, provided that under the New Act, manufacturers will be liable for acts of product liability even if it proves negligent or fraudulent to make a clear product warranty. Certain exceptions are provided under the New Act from credit claims, such as, a product retailer will not be liable for product misuse, alteration or repair.<sup>9</sup>
- vi. **Unfair Trade Practices:** The New Act introduces a specific broad definition of Unfair Trade Practices, which also includes sharing of personal information given by the consumer in confidence, unless such disclosure is made in accordance with the provisions of any other law.
- vii. **Penalties for Misleading Advertisement:** CCPA may impose a fine of up to INR 1,000,000 (Indian Rupees One Million) on the manufacturer or agent, for false or misleading advertising. The CCPA may also sentence them to two (two) years in prison respectively. In the latter case, the fine can be increased to INR 5,000,000 (Indian Rupees Five Million) and imprisonment for up to five (five) years. CCPA can also prevent a misleading ad sponsor from allowing that particular product or service for up to one (one) year. In all subsequent cases, the term of the ban may exceed three years. The New Act fixes debt for sponsors considering that there have been many cases in the past where consumers have been victims of unfair trade practices under the influence of celebrities acting as brand ambassadors. In such cases, it is important for the plaintiff to take responsibility and work diligently to verify the validity of the claims made in the ad to counter the claims of the debt. 1011
- viii. **Provision for Alternate Dispute Resolution**: The New Act provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker. This will help with the speedier resolution of disputes and reduce pressure on consumer courts, who already have numerous cases pending before them.

## 4.3 International Perspective on E-Commerce after Covid-19

# **UNCTAD Report on Overall Sales Trends**

E-commerce companies have seen a decline in sales, while about 60 percent of external online markets have seen an increase in sales. The latter ride new retailers and attract more customers. For the tested businesses, the outbreak of the COVID-19 crisis had a divisive effect. About 58 percent of e-commerce companies selling online goods and services experienced a decline in sales. Most of them have seen a drop in sales by more than 50 percent, which could be due to locking mechanisms or other restrictions including travel and travel restrictions. However, about 30 percent of them saw an increase in their monthly sales.

In contrast, in the online third-party markets, nearly 60 percent have seen increased sales. At 37 percent of the market, sales had risen between 10 and 50 percent. The increase in sales found in the online third-party markets is in line with the growing number of buyers and sellers in the tested third-party markets. But about a third of markets have seen their customers decline recently and about a fifth have lost retailers. While overall trends suggest that digital business models are completely different, that is, third-party markets that perform better than e-commerce companies, diversity is also possible due to different levels of impact across all sub-sectors and their sales structure.<sup>12</sup>

A paper studied the organizational inclination to deploy E-commerce technologies because this asists the firms design appropriate interventions for controlling it. It also proposed a framework which explained the influence of organizational factors on the propensity to deploy the E-commerce technologies. (Tarafdar, Vaidya 2006).

#### **Impact on India**

An E-Commerce Market study published by the Competition Commission of India ("CCI") in January 2020 highlighted an increase in sector revenue growth from USD 39 billion in 2017 to USD 120 billion by 2020, making India one of the fastest-growing e-commerce market spaces in the world. As the industry grows at a faster pace, the current epidemic and subsequent outcomes including a general fear of the virus (given the growing number of Covid-19 cases) have contributed to boosting the growth of commercial platforms beyond real markets.13 E-commerce has helped in providing better choices to the customers to choose the products or goods at lower cost anytime, anywhere with much ease. Modern communication instruments and digitally assisted devices are involved in E-commerce for better business. (Garg, Bansal, et al 2020). A paper which well dealt with the conceptual knowledge of search engine marketing (SEM) for ecommerce and aspects of e-commerce in Indian context highlights how user friendly e-commerce has become now a days. With search engines consumers have variety as well as price competitive study before making a purchase. The paper highlights the advantages of internet marketing and motivating factors for shopping online. (Gangeshwar, 2013)

# **World Trade Organization Report**

On 4<sup>th</sup> May 2020, WTO released the Information Note on **E-COMMERCE**, **TRADE AND THE COVID-19 PANDEMIC**, in which they have mentioned the key points<sup>14</sup>:

- 1. The enforcement of social segregation, workplace and other forms of response to the COVID-19 epidemic has led consumers to increase online purchases, use of telecommunications, internet telephony and teleconferencing, as well as the distribution of videos and films. This has led to opposition to business-to-consumer (B2C) sales and increased business-to-business (B2B) e-commerce.
- 2. The E-trade in goods and services that have a negative impact are the same factors that have caused the supply and demand demand as a whole. Such disruption has led to delays in the delivery or complete cancellation of orders. Many e-commerce-related challenges have emerged or improved during the epidemic. These include inflation (meaning raising prices to unreasonably high levels), concerns about product security, deceptive practices, concerns about cyber security, the need for increased bandwidth, and concerns related to development.
- 3. The epidemic has highlighted the great need to close the digital divide, internally and externally, due to the critical role played by the digital economy in times of crisis. Many traditional barriers have been strengthened and continued to hamper greater participation in e-commerce activities by small producers, retailers and consumers in developing countries, especially in developed countries (LDCs). This emphasizes the need for efficient and affordable ICT services, such as telecommunications, computer and other IT services and emerging technologies.<sup>15</sup>
- 4. Governments have taken new steps, and private companies have also taken action, responding and ensuring that trade can help alleviate some of the challenges facing the virus. These include increasing network capacity, providing increased data services at less or less cost, reducing or eliminating transaction costs in digital payments and cash transfers, improving service delivery and other consumer goods, using digital tools to enforce measures and disseminate information, promote services and use services. -ICT screening.<sup>16</sup>

# Some Important Legal Issues aroused from Covid-19 on E-Commerce $^{17}$

#### 1. Terms of Sale:

The terms and conditions of the sale are important for online retailers. This sets the legal basis on which goods or services are provided to the consumer and includes important details (e.g. delivery, price, and payment terms). Most importantly, these policies allow retailers to protect themselves by reducing credit limit. Vendors should take care, when preparing any such terms, to avoid imposing any terms that would be considered 'inappropriate' under applicable laws governing consumer contracts.

## 2. Consumer Rights Information:

The Consumer Information Rights Act places obligations on retailers to provide information to consumers before purchasing goods or services. Buyers should be notified of the seller's address and address, shipping features, price or method of calculating the cost, and any delivery costs.

## 3. Cancellation Rights:

For 'distance' contracts (contracts held 'inadvertently' online or by email, SMS, fax, telephone or telephone), buyers must be notified of the 14 'cooling' days that authorize them to cancel the contract within 14 days of delivery. of goods.

# 4. Website/App Terms of Use: 18

These Terms (unlike the Terms of Sale) apply to all users of a website / application rather than to customers only and set the terms and conditions that a user may apply to the website / application. These policies allow businesses to reduce their liabilities and secure ownership of intellectual property over website or app content.

# 5. Website Cookies Policy:

Any website or app where purchasing goods and services will always use cookies or similar technologies. As reported by us here, the Data Protection Commission (DPC) recently published a report and guided the use of cookies and tracking technology.

#### **6. Website Privacy Statement:**

Many websites and apps will collect some, or very limited, personal data from website users. Vendors should therefore take care to ensure that their websites and applications contain a Privacy Statement that meets the standards set by the GDPR.

#### 7. Electronic Marketing Consents:

Many businesses will want to target customers by posting online marketing communications related to the new offering. This type of marketing is strictly regulated and is often prosecuted by the DPC. Relationships with each customer will be different and legal advice should be sought in these marketing activities as this is a complex legal area.

### 8. Geo-blocking:

The Geo-blocking Regulation (recently implemented), places an obligation on retailers to treat EU customers in the same way if they are in the same situation regardless of nationality, place of residence or place of origin.

#### 9. Advertising Code:

Where a business has registered for the Code of Standards for Advertising and Marketing Communication in Ireland (the Code), it must take care to ensure that all online advertising complies with the standards set by the code. Equally, an entity must ensure that its advertisements are not false or misleading as this may result in liability under consumer protection laws.

# 10. Online Dispute Resolution: 19

The European Commission has established an online platform where customers are provided with quick and inexpensive ways to resolve disputes arising from online marketing. Vendors involved in online marketing are required to provide customers with a link to the platform on their website.

## **Intellectual Property Rights Issues**

One of the most important considerations for any company entering into business, including e-commerce transactions, is intellectual property. Because the internet is unrestricted and unregulated, protecting intellectual property rights (IPR) is a challenge and a growing concern for most e-businesses. In the physical world, India has a well-defined legal and regulatory framework for the protection of IPRs. However, determining the effectiveness of these laws in protecting rights during and after an e-commerce transaction is not straightforward.

Another important aspect of domain name disputes is that Indian law is silent on it. Before beginning e-commerce activities, a company must first register its domain name. In the simplest terms, a domain name is an internet address. In more technical terms, a domain name is a name for an Internet Protocol resource that is easily recognisable and memorable. Normally, domain names are protected by trademark law. A domain name registry will not register two domain names that are identical, but it may register a domain name that is similar. As a result, it is possible for a third party to register deceptively similar domain names. Except for judicial pronouncements that have reaffirmed the principles of law that domain names are valuable property and are entitled to trade mark protection, there is no specific Indian law on domain names. A research paper on B2C Ecommerce and its percentage of gross domestic product in Indian economy was studied and paper talked about entrepreneurs roles and decreasing value of ease of doing business in India as India in 2017 ranked in 100th position from 132<sup>nd</sup> position out of 190 countries in 2008 . in a developing economy like India which has bigger rural base has got potential of leap-frog into the knowledge paradigm. (Kumar, Fahad, Kapoor, 2018).

#### **Conclusion**

The legislations and regulations have helped strengthened the e-commerce industry both operations and customer statisfaction. The Consumer Protection Act has helped the enhance the consumer rights and statisfaction and even curtail the unfair trade practices both in B2C and B2B

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segements. The Information Technology Act 2000 (2008) has made the electronic communication enriched in comparison to the earlier paper-based communication, and made east to use and expeditious e-commerce user friendly. The legal recognition to many procedures and internet banking, UPI based payments systems and consumer redressal forum taking up grievances have been other factors which has boosted E-commerce industry.

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